

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
NEW YORK CITY, N.Y**

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LI, Meizhen
CIS File No. A97-817-055 (LIN-06-001-53180)
JIANG, Xiuhe
CIS File No. A99 327 015 (LIN-08-058-51606)

-Plaintiffs

COMPLAINT

v.

Case Docket No.08cv4266
Stein, "ECF CASE"
No Jury Trial

F. Gerard Heinauer
Director, Nebraska Service Center, DHS

M. Mukasey, Attorney General
United States Department of Justice
-Respondent

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PLAINTIFFS COMPLAINT TO DECIDE
FEDERAL QUESTION

COME NOW Li, Meizhen and Jiang, Xiuhe, plaintiffs, in the above-styled and numbered case and for cause of action would show unto the Court the following:

1. This action is brought against the Defendants to decide a federal question concerning the sufficiency of evidence in an adjudication of an I-730 petition filed by an asylee for her alien husband. The application was filed and denied on March 28, 2008 to plaintiff's detriment (LIN-06-001-53180; LIN-08-058-51606).

PARTIES

2. The plaintiffs are wife and husband natives and citizens of China, residing at 47-08 90th St., Elmhurst N.Y. 11373 in Queens County, N.Y. The wife, Li Mei Zhen was born on 10/14/74 and entered the U.S. without inspection on 9/26/04 at Calexico, CA. She married Jiang, Xiu He on 12/30/94 in Changle, Fujian, China. He was born on 11/04/71. They have two children, both in China, DOB: 3/6/96 and 2/12/01.

3. Defendant F. Gerard Heinauer is the Director of the Nebraska Service Center, U.S. Dept. of Homeland Security, U.S. Citizenship and Immigration Services. He is an official of that department generally charged with supervisory authority over all operations of USCIS Nebraska Service Center at P.O. Box 82521, Lincoln, Nebraska, 68501-2521. Specifically, he is charged with the adjudication of I-703 petitions filed by asylees for their alien spouses.
4. Defendant M. Mukasey, Attorney General, United States Department of Justice in his official capacity is charged with the enforcement of the Immigration and Nationality Act (INA) and is further authorized to delegate such powers and authority to subordinate employees of the Department of Justice. More specifically, the Attorney General is responsible for the adjudication of I-730 petitions filed pursuant to 8 CFR section 208.21: Admission of asylee's spouse and children. USCIS is an agency within the Department of Justice to which the Attorney General's authority has in part been delegated and is subject to the Attorney General's supervision.

JURISDICTION

5. A Federal Question is raised by this cause of action under 28 U.S.C. section 1331 and 8 CFR section 208.21 (f) and sections 204.2. (a) (1) and 204, 2 (a) (i)(1) (B)

VENUE

6. Venue in the District Court of the Southern District of N.Y. is proper under 28 U.S.C. section 1391 (e) in that plaintiffs reside in a borough of the City of New York.

EXHAUSTION OF REMEDIES

7. Plaintiffs have exhausted their administrative remedies in that a Motion to Reopen an I-703 adjudication was filed on Nov. 26, 2007 and denied on March 28, 2008.

CAUSE OF ACTION

8. The location of events giving to this case cause of action occurred at the Nebraska Service Center, USCIS in Lincoln, Nebraska when USCIS denied an I-730 petition on March 28, 2008. The Service said in its decision that the petitioner's wife, Li Mei Zhen did not meet the burden of proof of clear and convincing evidence that a bona fide spousal relationship existed between her and her beneficiary husband.
9. Li Mei Zhen, the wife asylee filed a Refugee/Asylum Relative Petition (I-730) with the Nebraska Service Center, USCIS, for her husband beneficiary on Oct. 21, 2005. This was denied on Oct. 30, 2007. USCIS said at that time that it would not ascertain that the wife lived with the husband since the evidence submitted with the petition which consisted of, along with a marriage certificate, affidavits from employer, colleagues, and friends, attested to the fact that Ms. Li lived and worked in Rockingham, North Carolina while her I-485 Adjustment of Status Application filed in Oct. 2001 listed a Bayside, N.Y.

address. Furthermore, the USCIS stated, Form G- 325A stated that Ms. Li moved from Rockingham, North Carolina, to Bayside, N.Y, in Oct. of 2006. Ms. Li thereupon filed a motion to reopen which was denied on March 28, 2008. This motion explained that Ms. Li kept two addresses, one for her mail. The Service did not accept Ms. Li's explanation.

10. Defendants misapplication of the standard of proof in this case by applying a clear and convincing standard while the relevant regulation calls for a preponderance of evidence standard have deprived plaintiffs of a rightful decision of their status and the peace of mind to which they are entitled.
11. Plaintiff Ms. Li, an asylee, has waited almost three years for her beneficiary husband to receive legal status in the U.S.
12. Specifically, plaintiff husband has been deprived of adjustment of status and employment authorization to which he is entitled.
13. Defendants have acted contrary to law. Even if it is held that the current standard of proof is clear and convincing evidence of a bona fide marriage, Defendants have abused their discretion under the Administrative Procedure Act, 5 S U.S.C, section 701 et. Seq. by failure to adjudicate the I-730 in accordance with the law.

PRAYER

WHEREFORE, in view of the authority and arguments herein, Plaintiffs respectfully pray that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) requiring Defendants to apply the correct standard of proof to the adjudication, or;
- (b) requiring Defendants to readjudicate the I- 730 petition in light of a determination that the evidence of a bona file marriage is sufficient;
- (c) awarding plaintiffs reasonable attorney's fees; and
- (d) granting such other relief at law and in equity as justice may require.

New York, NY
Date: 5/6/2008

Respectfully submitted,

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Encls:
List of Attachments

LIST OF ATTACHMENTS

- A. USCIS decision of Oct. 30, 2007.
- B. USCIS decision of March 28, 2008.